

RESOLUTION NO. 08-23

RESOLUTION OF THE SAN JOSE APPEALS HEARING BOARD ADOPTING RULES AND REGULATIONS PERTAINING TO THE ORGANIZATION OF THE BOARD, MEMBERSHIP, OFFICERS, AND MEETINGS.

BE IT RESOLVED BY THE SAN JOSE APPEALS HEARING BOARD:

WHEREAS, Part 29 of Chapter 2.08 of Title 2 of the San Jose Municipal Code provides for the creation of the San Jose Appeals Hearing Board, and did set forth certain powers and duties of said Appeals Hearing Board; and

WHEREAS, Section 2.08.100 of Part 1 of Chapter 2.08 of Title 2 of the San Jose Municipal Code authorizes the Appeals Hearing Board to establish rules and regulations for the operation of the Appeals Hearing Board;

NOW, THEREFORE, the following are hereby adopted by the San Jose Appeals Hearing Board as its official Rules and Regulations:

**RULES AND REGULATIONS
OF THE
SAN JOSE APPEALS HEARING BOARD**

**ARTICLE I
THE SAN JOSE APPEALS HEARING BOARD**

Section 100 Name of Board

The official body referred to in these Rules and Regulation shall be known and referred to as the "San Jose Appeals Hearing Board" or, in the alternative, the "Appeals Board" or "Board".

Section 101 Office of Board

The official office and mailing address of the Appeals Hearing Board shall be:

Secretary – San Jose Appeals Hearing Board
Department of Planning, Building and Code Enforcement
200 East Santa Clara Street
San Jose, CA 95113

Section 102 Meeting Place of Board

Except as otherwise may be provided by the Appeals Board from time to time, the regular meeting place of the Appeals Board shall be the City Council Chambers, City Hall, 200 East Santa Clara Street, San Jose.

Section 103 Number of Members

The Appeals Hearing shall consist of seven (7) members, appointed by the City Council of San Jose.

ARTICLE II
OFFICERS

Section 200 Enumeration of Officers

The officers of the Appeals Board shall be a Chairperson and Vice-Chairperson.

Section 201 Election of Officers

The officers of the Appeals Board shall be elected by the members of the Board.

Section 202 Qualification of Chairperson

The Chairperson of the Appeals Board shall be one of the members of the Board.

Section 203 Term of Office of Chairperson

The term of Office of the Chairperson of the Appeals Board shall be two (2) years. The office of Chairperson shall be voted upon bi-annually by the Appeals Board on the last Board meeting of each two year term, for the election of Chair and Vice-Chair commencing as of January 1 of the succeeding year; provided, however, that there shall be no limitation on the number of terms an incumbent may serve. In the event of the death, resignation or removal of the Chairperson prior to the expiration of his or her term of office, the successor shall be elected for the unexpired period of the term for which the preceding Chairperson had been designated.

Section 204 Removal of Chairperson from Office

The Appeals Board, by vote of at least four (4) members, may remove the Chairperson from office at any time for any reason, and appoint a new Chairperson for unexpired term of office of the removed Chairperson.

Section 205 Powers and Duties of Chairperson

The Chairperson shall have the following powers and duties:

- a. Preside at all meetings of the Appeals Board, and at all hearings conducted by the Board.
- b. On behalf of the Appeals Hearing Board, sign all written resolutions of the Appeals Board making findings and conclusions and reciting decisions of the Appeals Hearing Board in matters brought before it, as required by the Municipal Code and applicable laws, and such other resolutions, orders, or documents that are authorized by the Board.
- c. Perform such other duties as may be required either by the City Council or by resolution or motion of the Appeals Board.

Section 206 Qualifications of Vice-Chairperson

The Vice-Chairperson of the Appeals Board shall be one of the members of the Board.

Section 207 Term of Office and Removal of Vice-Chairperson

The term of office and removal of the Vice-Chairperson shall be in accord with those rules and procedures established for the Chairperson, *supra*.

- a. All powers and duties of the Chairperson in the event of the absence or disability of the Chairperson.
- b. Preside, as Chairperson pro tempore, at all meetings and hearings of the Appeals Board in the event of the absence or disability of the Chairperson.
- c. Perform such other duties as may be required either by the City Council or by resolution or order of the Appeals Board.

Section 209 Chairperson Pro Tempore

In the event of the absence or disability of the Chairperson and Vice-Chairperson, at any meeting or hearing of the Appeals Board, the Board shall elect one of its members as Chairperson pro tempore to preside over such meeting or hearing.

Section 210 Appointment of Secretary

The Secretary of the Appeals Board shall be the Deputy Director of Planning, Building and Code Enforcement, Code Enforcement Division, or an authorized representative. The Secretary shall keep all records and minutes of the Board on the premises.

Section 211 Powers and Duties of Secretary

The Secretary shall have the following powers and duties:

- a. The Secretary (or one of his/her representatives or deputies) shall attend all meetings and hearings of the Appeals Board, and shall cause a tape or digital recording of such meeting to be made, and keep a synopsis, minutes, or other record of all that transpires at such meetings or hearings.
- b. Sign any such synopsis, minutes or other record of the Appeals Board and have custody of the same.
- c. Keep and have custody of all tape or digital recordings, books, records, resolutions and papers of the Appeals Board, and certify true copies thereof whenever necessary.
- d. Write and issue meeting agendas and required meeting notices.
- e. Do all other things required by the rules and regulations, or by order of the Appeals Board.

ARTICLE III **MEETINGS**

Section 300 Regular Meeting

Regular meetings of the Appeals Board shall be held at 6:30 p.m. on the second and fourth Thursday of each and every calendar month except January, October, November and December. Meetings in January, October, November and December may be limited to one meeting per month due to conflict with training retreats and holidays.

Section 301 Special Meetings

- a. Special meetings of the Appeals Board may be called at any time by the Chairperson, or by four or more members, whenever in their opinion the business of the Board requires it. The notice of a special meeting shall specify the time, place, and the business to be conducted or transacted at the meeting. No other business shall be considered at the special meeting. The notice shall be filed with the Secretary in his/her office. The Secretary shall cause a copy of the notice to be served upon each member of the Board at least twenty-four (24) hours before the time of the meeting specified in the notice, or for such greater period of time as may be required by law or set forth by City policy, rules or regulations, either by personal delivery or by mail. Each member shall, for mailing purposes, file his/her name and address with the Secretary.

- b. Written notice may be dispensed with for any member who at or prior to the time the meeting convenes files with the Secretary a written waiver of notice. The waiver may be given by telegram, fax or electronic mail. Written notice may also be dispensed with for any member who is actually present at the meeting at the time it convenes.
- c. Written notice of special meeting shall also be mailed or personally delivered to each local newspaper of general circulation, radio or television station requesting notice in writing.
- d. The written notice shall be posted at least twenty-four (24) hours prior to the special meeting, or for such greater period of time as may be required by law or set forth by City policy, rules or regulations, in a location that is freely accessible to members of the public.

Section 302 Continued Meetings

Meetings of the Appeals Board, whether regular or special, may be adjourned by the Board to reconvene at a time to be specified by the Board at the time it adjourns. In such event, no other official notice need be given of the time at which such adjourned meeting will reconvene. Any such reconvened meeting shall, in such a situation, be considered a continuation of the prior meeting.

Section 303 Quorum

A quorum to do business shall consist of four (4) members of the Appeals Board, but a lesser number may constitute a quorum for the purpose of adjourning a meeting or adjourning a meeting to a stated time. In the absence of all the members of the Board from any meeting the Secretary of the Appeals Board may adjourn the meeting or adjourn the meeting to a stated time.

Section 304 Procedure

Except as otherwise provided by the Appeals Board, the procedure to be followed by the Board at its meetings shall be that set forth in Robert's Rules of Order. The Board may act by resolution or motion, but an affirmative vote of at least four (4) members shall be necessary for all decisions of the Board except in matters of adjournment.

Section 305 Ayes and Noes

All voting by Appeals Board members shall be by "ayes" and "noes", and shall be entered by the Secretary in the record of the Board proceedings. Upon request of any member of the Board, a roll call vote shall be taken on any matter upon which a vote is called, and shall be recorded by the Secretary in the record of the Board's proceedings.

Section 306 Order of Business

The order of Business shall be set by the Appeals Board. The Appeals Board may at any time alter the order of business at any meeting.

Section 307 Matter of Agenda

Notification of matters to be presented to the Appeals Board shall ordinarily be given or delivered to the Secretary at least ten (10) days in advance of the Board meeting.

ARTICLE IV
HEARING PROCEDURES

Section 400 Application

The hearing procedures under this Article shall govern all hearings and appeals which the Appeals Board is authorized to conduct by the San Jose Municipal Code or the City Council except for appeals of relocation determinations. Relocation appeals hearing procedures shall be governed by applicable federal and state laws and any applicable City guidelines, rules and regulations.

Section 401 Scope of Formal Review

The Appeals Board shall hear and review the administrative determination of appellants in light of:

- a. all of the material on which staff based its determination, including all applicable rules and regulations;
- b. the reasons given by the appellant for requesting review of the determination;
- c. any additional relevant documentary and testamentary material submitted by the appellant, and
- d. any further information which the Appeals Board in its discretion obtains by request or investigation to insure a fair, full and impartial review of the claim.

Section 402 Conduct of the Hearing

Hearings shall not be conducted according to technical rules of evidence, however:

- a. Oral evidence shall be taken only on oath or affirmation.

- b. Admissibility of evidence. Any relevant evidence shall be admitted if it is of the type of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions in courts of competent jurisdiction in this state.
- c. Exclusion of evidence. Irrelevant and unduly repetitious evidence shall be excluded.

Section 403 Rights of Parties

- a. To call and examine witnesses on any matter relevant to the issues of the hearing.
- b. To introduce documentary and physical evidence.
- c. To cross-examine witnesses on any matter relevant to the issues of the hearing.
- d. To impeach any witness regardless of which party first called the witness to testify.
- e. To introduce rebuttal evidence.
- f. To be represented by any person who is lawfully permitted to so represent.

Section 404 Findings and Order

- a. Within thirty (30) days following the conclusion of the hearing, the Appeals Board shall make written findings of fact, based upon the evidence received at the hearing to support its decision and shall issue an order affirming, modifying, or overruling the determination or order of the City Manager under appeal.
- b. The decision of the Appeals Board shall be final and conclusive unless an appeal is authorized by ordinance.
- c. Unless an appeal is authorized by ordinance, the finding and order of the Appeals Board shall include the following notice:

Notice to Parties

The time within which judicial review must be sought to review this decision is governed by the provisions of California Code of Civil Procedure Section 1094.6.

- d. The findings and order of the Appeals Board shall either be personally delivered or mailed to the appellant within thirty (30) days following the conclusion of the hearing.

Section 405 Standard of Review

The Appeals Board shall not substitute its judgment for that of an administrative officer but shall insure that the determination fully and correctly considered all facts and legal requirements.

Section 406 Burden of Proof

A. In all cases where the Appeals Hearing Board is the first hearing body for an appeal of a decision or order of the City, the burden of proof shall be on the City and the City's case shall be proved by a preponderance of the evidence standard. This standard of proof means that the triers of fact (the members of the Board) determine that the existence of a fact is more probable than its nonexistence.

B. In such cases where the Appeals Hearing Board is hearing the appeal of an appellant from an intermediate administrative hearing officer pursuant to the Municipal Code, the burden of proof shall be on the appellant and the administrative officer's determination shall be upheld if it is based upon substantial evidence. "Substantial evidence" is evidence which a reasonable mind would accept as sufficient to support a particular conclusion. The appellant has the burden of demonstrating to the Board that there is no substantial evidence in the administrative record to support the decision of the hearing officer.

Section 407 Record

A record of the entire proceedings before the Appeals Board shall be made by tape or digital recording or by any other means of permanent recording determined to be appropriate by the Appeals Board. A copy of the tape or transcript of the proceedings shall be available to all parties upon request and upon prepayment of the fee prescribed by the City Council.

Section 408 Continuances

The Appeals Board may grant continuances for good cause shown. All time limits specified herein may be extended upon a showing of good cause therefore.

Section 409 Oaths

Any member of the Appeals Board or the City Attorney has the power to administer oaths and affirmations.

Section 410 Reasonable Dispatch

The Appeals Board shall proceed with reasonable dispatch to conclude any matter before it. Due regard shall be shown for the convenience and necessity of any party or parties or their representatives.

ARTICLE V
CONSISTENCY WITH OTHER LAW

Section 500 Consistency with Other Law

To the extent that the above rules and regulations differ from or are inconsistent with the provisions of the San Jose Municipal Code or State or Federal law, the appropriate provision of law will prevail.

Section 501 Prior Rules and Regulations superseded

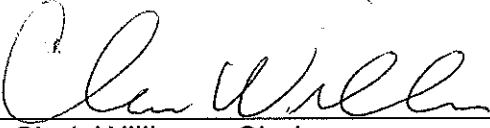
Any prior Rules and Regulations adopted by the Appeals Hearing Board are hereby rescinded and these Rules and Regulations are effective as of the date of this Resolution.

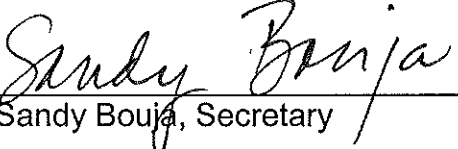
Rules and Regulations of the San Jose Appeals Hearing Board adopted the
____ 13th ____ day of ____ March ____, 2008, by the following vote:

AYES: Chu, Etienne, Hernandez, Overton, Parsons, Ruscigno, Williams

NOES:

ABSENT:


Clark Williams, Chairperson


Sandy Bouja, Secretary